

SUBCHAPTER F—POLICY STATEMENTS

PART 398—GUIDELINES FOR INDIVIDUAL DETERMINATIONS OF BASIC ESSENTIAL AIR SERVICE

Sec.

- 398.1 Purpose.
- 398.2 Number and designation of hubs.
- 398.3 Specific airports.
- 398.4 Equipment.
- 398.5 Frequency of flights.
- 398.6 Seat guarantees.
- 398.7 Timing of flights.
- 398.8 Number of intermediate stops.
- 398.9 Load factor standards.
- 398.10 Overflights.
- 398.11 Funding reductions.

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§ 398.1 Purpose.

The purpose of this part is to establish general guidelines for the determination of basic essential air service for each eligible place under 49 U.S.C. 41731 and 41732. Procedures for the determination of the essential air service level for a place are contained in part 325 of this chapter.

§ 398.2 Number and designation of hubs.

(a) *What is a hub?* The Department considers hubs as belonging to any one of three classifications:

(1) A *large* hub is a place accounting for at least 1.00 percent of the total enplanements in the United States;

(2) A *medium* hub is a place accounting for at least 0.25 percent but less than 1.00 percent of the total enplanements in the United States; and

(3) A *small* hub is a place accounting for at least 0.05 percent but less than 0.25 percent of the total enplanements in the United States.

(b) *How many hubs?* (1) As a general matter, the Department will require service to one large or medium hub.

(2) In Alaska or when the nearest large or medium hub is more than 400 miles from the eligible place, the De-

partment may instead require service to a small hub or nonhub.

(3) In some cases, the Department may require service to two hubs, of which at least one will be a large or medium hub. The Department will require service to two hubs if an eligible place has close commercial, geographic, and political ties to both hubs and if there is sufficient traffic from the eligible place to support two round trips a day to both hubs. If traffic is not sufficient, the Department may require one round trip a day to both hubs if the community requests such service.

(4) In no event will essential air service consist of service to more than two hubs.

(c) *Which hub?* (1) In designating hubs, the Department will weigh all of the following factors:

(i) The extent to which candidate hubs provide access to the national air transportation system;

(ii) The commercial, geographic, and political ties of candidate hubs to the eligible place;

(iii) The traffic levels to candidate hubs, as shown by traffic studies and origin and designation data;

(iv) The distance of candidate hubs from the eligible place; and

(v) The size of candidate hubs. Large size will be a positive factor, but principally as substantiating the access and community-ties factors.

(2) For Alaska, rather than requiring service to a hub, the Department may instead require that service from an eligible place be provided to a nearby focal point for traffic which, in turn, has service to a hub.

§ 398.3 Specific airports.

(a) At an eligible place, essential air service may be specified as service to a particular airport. In the case of hyphenated places, essential air service will be specified as service to more than one airport only if clearly necessary and if the multi-airport service is economically feasible and justified on the basis of traffic levels at those airports.

(b) At a hub, essential air service is not usually specified as service to a particular airport.

§ 398.4 Equipment.

(a) Except in Alaska, service will be provided by aircraft offering at least 15 passenger seats, unless:

(1) Average daily enplanements at the place did not exceed 11 passengers for any fiscal year from 1976 through 1986;

(2) The requirement would necessitate the payment of compensation in a fiscal year for service at the place when compensation would otherwise not be necessary; or

(3) The affected community agrees in writing to the use of smaller aircraft to provide service at the place.

(b) The aircraft must have at least two engines and use two pilots, unless scheduled air transportation has not been provided to the place in aircraft with at least two engines and using two pilots for at least 60 consecutive operating days at any time since October 31, 1978.

(c) The aircraft must be pressurized when the service regularly involves flights above 8,000 feet in altitude.

(d) All aircraft must meet the applicable safety standards of the Federal Aviation Administration.

(e) The aircraft must be conveniently accessible to passengers by stairs rather than over the wing.

§ 398.5 Frequency of flights.

(a) Except in Alaska, at least two round trips each weekday and two round trips each weekend.

(b) In Alaska, a level of service at least equal to that provided in 1976, or two round trips each week, whichever is greater, except that the Department and the appropriate State authority of Alaska may agree to a different level of service after consulting with the affected community.

(c) An essential air service level may be set at more than that stated in paragraphs (a) and (b) of this section if:

(1) Historical traffic data and studies of traffic-generating potential for the place indicate that more frequent service is needed to accommodate passengers and accompanying baggage with the aircraft used at that place;

(2) More flights are needed because the capacity available to the eligible place is being shared with traffic destined for an intermediate stop or for a place beyond the eligible place;

(3) More flights are needed to accommodate passengers because smaller aircraft are being used at the place;

(4) More flights are needed in order to ensure adequate connecting opportunities as provided for by § 398.7; or

(5) For Alaska, the appropriate state agency agrees that more frequent service is needed to accommodate cargo traffic with the aircraft used at the eligible place.

(d) For eligible places where traffic levels vary substantially with the season, a two-tier level of essential air service may be established with required flight frequencies changing accordingly.

§ 398.6 Seat guarantees.

(a) The number of seats guaranteed at the eligible place will be sufficient to accommodate the estimated passenger traffic at an average load factor of 60 percent, except that an average load factor of 50 percent will be used when service is provided with aircraft having fewer than 15 passenger seats.

(b) Only under unusual circumstances will an eligible place's essential air service level be set at a number of flights that will accommodate more than 40 passengers a day in each direction (a total of 80 inbound and outbound passengers). Generally, 40 passengers can be accommodated by guaranteeing 67 seats a day in each direction (a total of 134 inbound and outbound seats).

(c) The Department may guarantee an eligible place more than 67 seats a day if:

(1) The number of stops between or beyond the eligible place and the hub results in available aircraft capacity being shared with passengers at those other places;

(2) The distance between the eligible place and the designated hub requires the use of large aircraft;

(3) The eligible place has suffered an abrupt and significant reduction in its service that warrants a temporary increase in the maximum guaranteed capacity; or

§ 398.7

(4) Other unusual circumstances warrant guaranteeing the eligible place more than 67 seats a day.

§ 398.7 Timing of flights.

To qualify as essential air service, flights must depart at reasonable times, considering the needs of passengers with connecting flights at the hub. It is the policy of the Department to consider the reasonableness of the time in view of the purpose for which the local passengers are traveling. If travel is primarily to connect with other flights at the hub, local flight times should be designed to link with those flights. If travel is primarily local (*i.e.*, to and from the hub), there should be at least one morning flight in each direction and one late-afternoon or evening flight in each direction.

§ 398.8 Number of intermediate stops.

(a) Except in Alaska, no more than one intermediate stop is permitted in providing essential air service between the eligible place and its hub, unless otherwise agreed to with the community. In cases where an eligible place receives service to two hubs, however, more than one intermediate stop is permitted between that place and its secondary hub.

(b) In Alaska, more than one intermediate stop is permitted if required by low traffic levels at the eligible place or by the long distance between the eligible place and its hub.

(c) The Department may specify non-stop service when necessary to make the service viable.

(d) Where an eligible place normally is an intermediate stop that shares available capacity with another place, it is the policy of the Department either to require additional capacity (more flights or larger aircraft) between the eligible place and its hub or to specify some turnaround operations on that route segment.

§ 398.9 Load factor standards.

The load factor standards used in this part may be raised for individual eligible places under either of the following circumstances:

(a) The place is served by the carrier as part of a linear route; or

14 CFR Ch. II (1–1–12 Edition)

(b) It would be in the interest of the community, the carrier, or the general public to raise the load factor standard for that place.

§ 398.10 Overflights.

The Department considers it a violation of 49 U.S.C. 41732 and the air service guarantees provided under this part for an air carrier providing essential air service to an eligible place to overfly that place, except under one or more of the following circumstances:

(a) The carrier is not compensated for serving that place and another carrier is providing by its flights the service required by the Department's essential air service determination for that place;

(b) Circumstances beyond the carrier's control prevent it from landing at the eligible place;

(c) The flight involved is not in a market where the Department has determined air service to be essential; or

(d) The eligible place is a place in Alaska for which the Department's essential air service determination permits the overflight.

§ 398.11 Funding reductions.

(a) If, in any fiscal year, appropriations for payments to air carriers remain at or below the amounts estimated as necessary to maintain subsidy-supported essential air service at the places receiving such service, and Congress provides no statutory direction to the contrary, appropriations shall not be available for essential air service to otherwise eligible places within the 48 contiguous States and Puerto Rico that have a rate of subsidy per passenger in excess of \$200.00, or are located:

(1) Less than 70 highway miles from the nearest large or medium hub airport;

(2) Less than 55 miles from the nearest small hub airport; or

(3) Less than 45 highway miles from the nearest nonhub airport that has enplaned, on certificated or commuter carriers, 100 or more passengers per day in the most recent year for which the Department has obtained complete data.

(b) The rate of subsidy per passenger shall be calculated by dividing the annual subsidy in effect as of July 1 of the prior fiscal year by the total origin-and-destination traffic during the most recent year for which the Department has obtained complete data.

PART 399—STATEMENTS OF GENERAL POLICY

Subpart A—Applicability and Effects of Policy Statements

Sec.

- 399.1 Applicability.
- 399.2 Exclusions.
- 399.3 Statements in other Board documents.
- 399.4 Nature and effect of policy statements.
- 399.5 Arrangement of policy statements.

Subpart B—Policies Relating to Operating Authority

- 399.10–399.11 [Reserved]
- 399.12 Negotiation by air carriers for landing rights in foreign countries.
- 399.13–399.17 [Reserved]
- 399.18 Maximum duration of fixed-term route authorization granted by exemption; renewal of such authority.
- 399.19 [Reserved]
- 399.21 Charter exemptions (except military).

Subpart C—Policies Relating to Rates and Tariffs

- 399.30 Definitions.
- 399.31 Standard industry fare level.
- 399.32 Zone of limited suspension for domestic passenger fares.
- 399.33 Additional fare flexibility.
- 399.34 Intra-Hawaii and Intra-Puerto Rico/Virgin Islands fare flexibility.
- 399.35 Special tariff permission.
- 399.36 Unreasonable discrimination.
- 399.37 Joint fares.
- 399.39 Equipment purchase deposits.
- 399.40 Tariffs for domestic air transportation on or after January 1, 1983.
- 399.41 Zones of limited suspension for international cargo rates.
- 399.42 Flight equipment depreciation and residual values.
- 399.43 Treatment of leased aircraft.
- 399.44 Treatment of deferred Federal income taxes for rate purposes.

EXAMPLE OF SIFL ADJUSTMENT

Subpart D [Reserved]

Subpart E—Policies Relating to Hearing Matters

- 399.60 Standards for determining priorities of hearing.
- 399.61 Presentations of public and civic bodies in route proceedings.
- 399.62 Target dates in hearing cases.
- 399.63 Role of staff in route proceedings.

Subpart F—Policies Relating to Rulemaking Proceedings

- 399.70 Cross-references to the Office of the Secretary's Rulemaking Procedures.
- 399.73 Definition of small business for Regulatory Flexibility Act.

Subpart G—Policies Relating to Enforcement

- 399.80 Unfair and deceptive practices of ticket agents.
- 399.81 Unrealistic or deceptive scheduling.
- 399.82 Passing off of carrier identity by affiliation between carriers.
- 399.83 Unfair or deceptive practice of air carrier, foreign air carrier, or ticket agent in orally confirming to prospective passenger reserved space on scheduled flights.
- 399.84 Price advertising.
- 399.85 Notice of baggage fees and other fees.
- 399.86 Payments for non-air transportation services for air cargo.
- 399.87 Baggage allowances and fees.
- 399.88 Prohibition on post-purchase price increase.
- 399.89 Disclosure of potential for price increase before payment.

Subpart H—Other Policies Relating to Interests, Activities, and Relationships of Air Carriers

- 399.91 Air carrier participation in programs of technical assistance to airlines of less developed countries.

Subpart I—Policies Relating to Disclosure of Information

- 399.101 Public release of Board decisions in cases where the action of the Board is subject to the review or approval of the President.

Subpart J—Policies Relating to Federal Preemption of State Economic Regulations

- 399.111 All operations of federally authorized carriers to be regulated by the Board.